

# 11 Practical Measures to Promote Integrity in Customs Administrations

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The purpose of this chapter<sup>137</sup> is to outline an approach to promoting integrity—that is, reducing corruption—in customs administrations. It does not deal with the economic impact of such practices,<sup>138</sup> but instead provides a framework for changing the incentive structure and for establishing the legal and administrative procedures that are necessary to detect, punish, and reduce such undesirable behavior.<sup>139</sup>

## A. Causes of Corruption

In reviewing the causes of corruption, it is important to address not only the overall factors that may lead to corrupt practices but also the specific nature and causes of corruption in customs administrations. General factors include (1) extensive intervention of the government in the economy; (2) cultural norms and practices that influence the behavior of officials; (3) excessive discretionary power in the hands of officials, whether at headquarters level (in the granting of exemptions, for instance) or in local offices (in relation, for example, to the release of shipments); (4) lack of supervision and guidance; (5) lack of accountability; and (6) inadequate control systems. In addition to these general factors, incentives and opportunities to engage in corrupt practices exist far more in customs (and tax) administrations than in many other administrations. Nobody likes to pay taxes. Therefore, some importers and/or their agents will take every opportunity and make every effort to reduce their tax burden, including, if necessary, the bribing of a customs official. In the case of customs

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<sup>137</sup>Which draws extensively on Goorman (1993) and Dos Santos (1995).

<sup>138</sup>On this, see, for example, the survey by Bardhan (1997) and collection of articles in Abed and Gupta (2002).

<sup>139</sup>In 1993, at the annual meeting of the World Customs Organization in Arusha, Tanzania, the delegates agreed on a code related to integrity within customs administrations. It is known as the Arusha Declaration and it lists 12 steps that can be taken by a customs administration to address corruption or assist in detecting it. The recommendations in this paper are consistent with the code.

transactions, the incentive goes beyond just the desire to reduce the tax burden, as the importer is also interested in obtaining the goods as quickly as possible; this places the customs official in a strong position to extract bribes in order to “facilitate” their release.

The most important factors conducive to a lack of integrity in the customs administration of duties and taxes include the following:

- Complex and restrictive tax and foreign trade systems that lead to rent seeking and corrupt behavior. There is often a lack of information that allows importers and exporters to determine their liability and comply voluntarily with the law. Without this information and with complex rules, importers and exporters may have no choice but to meet with an official to seek an explanation or the exercise of the discretionary power that the official may possess.
- High tax and tariff rates. The higher the tax rates, the greater the incentive to engage in corrupt practices to reduce this burden. A dramatic example of this is in the area of high excise duties, particularly on tobacco and alcohol, where organized crime is involved in the bribery of revenue officials, resulting in widespread illegal production and smuggling of these goods. As noted in Chapter 1, the sums at stake can be huge, especially in relation to customs officers’ salaries. For instance, one Fiscal Affairs Department (FAD) mission found that on a container of vodka valued at US\$48,000, the combined import duty, VAT, and excise payments came to US\$172,000—about 15 times the annual salary of a customs officer.
- Exemptions. In addition to exemptions that are provided for in the law, discretionary exemptions that can be granted by the ministers and/or the head of the customs administration create the opportunity to engage in corrupt practices. They undermine the fairness of the system and may create, in the mind of the importers who are paying the duties and taxes, a doubt about the reasonableness of continuing to comply.
- Complex and bureaucratic procedures. Instead of making it easy for importers and exporters to voluntarily comply and pay taxes, multiple forms and steps are often introduced that require stops at many desks and visits to many offices—each one potentially associated with the payment of speed-money or some other illicit fee to facilitate processing.
- Weak control systems. Too little attention is paid to the implementation of systems that make it difficult for officials to engage in corrupt practices. Individuals take into account the perceived threat of being detected when they decide to engage in corrupt practices and, if the risk is low, many more will be willing to take the risk.
- Lack of effective disciplinary measures. Sanctions are an important factor in deterring corrupt behavior. If the penalties are not severe enough and applied

each time inappropriate behavior is detected, they will not be effective in reducing corruption.

- Lack of professionalism. Too often employment in customs administrations is seen as an opportunity to work for a short period of time to enrich oneself and not as a long-term professional career.

### **B. Building a System to Promote Integrity**

Building a system to promote integrity in customs administration requires not only the effort to put in place the necessary measures to combat corruption but also ongoing vigilance to ensure that the measures continue to operate as intended. Even in those countries that are considered to have the most efficient and honest administrations, considerable effort is still invested to ensure that the controls continue to operate and that corrupt behavior is detected and dealt with. Honest behavior by customs officials cannot be taken for granted: even in countries with generally low tax and tariff rates, criminals involved in drug smuggling have the ability to pay large amounts of money to a customs officer to allow a shipment to proceed without inspection.

In order to deal effectively with corruption, at the outset there must be a commitment from the government to address the problem. This goes beyond mere statements that corruption will not be tolerated to the actual actions of ministers and other high-ranking government officials. Too often these officials believe and act as if they are above the law and demand special treatment from customs officials (e.g., proceeding through customs without paying duty). Given this atmosphere, a government cannot, in all honesty, expect a customs officer to collect duties and taxes from every other importer. Once the commitment has been made, there are certain essential actions that must be undertaken to build a system that has integrity and that will produce the returns expected by the government. Most of these involve designing measures to reduce the incentives and opportunities to engage in corrupt practices and, at the same time, creating organizations that are interested in and committed to doing a good job. In one small African country, as part of their customs reform program, small incentives were introduced to enhance officers' pay. At the same time, actions were initiated to identify and discipline corrupt staff. The message was clear: the government was willing to invest in modernization, including better pay, but it expected officers to behave in a certain manner in return.

#### **A clear and well-understood policy framework**

Simplification of the tax and tariff system (such as reducing the number of rates to the minimum and restricting exemptions) is not only good economic policy but it also reduces opportunities for corruption. From a customs officer's point of view, simple, clear legislation creates the framework for the development of

systems and procedures that are easily understood by both the trade community and officials. This policy framework should be based on the following principles:

***A small number of rates.*** Rationalization of tax and tariff rates and clear definitions of how and when different rates apply reduce the need for interpretation by officials. In turn, this reduces the need for face-to-face negotiations that may result in the exchange of money for a favorable ruling.

***Low rates.*** If it is generally perceived that the system is fair, which means, among other things, that the tariff rates are reasonable, there is less incentive to become involved in fraudulent activities.

***Minimal exemptions.*** While it is virtually impossible to eliminate all exemptions, customs and tax legislation should be written to include exemptions in the law and to eliminate the discretionary power of ministers or government officials to grant exemptions.

***Minimal exercise of discretion.*** For the majority of transactions with the customs administration, it should be possible for the importer to understand the law and to meet the procedural requirements (especially if the importer is able to submit the information electronically). There should be little room for the exercise of discretion by the customs officer.

***Minimal nontariff barriers to foreign trade.*** The need for numerous approvals for foreign trade licenses, and multiagency authorization to import and export, creates the opportunity and incentive to engage in corrupt practices.

***Effective penalty system.*** A good penalty system should provide the administration with the ability to impose administrative penalties for minor offenses. This may include fines, for example, for exceeding the time allowed for completing a transit shipment and presentation of declarations with an unacceptable number of errors. It is not enough, however, for stiff penalties to be provided for in the legislation; they must also, where appropriate, be applied—and seen to be applied. This may seem (and is) obvious, yet in many countries what appear to be quite strong penalties are rarely (and sometimes never) enforced.

***An independent appeal mechanism.*** Every tariff and tax law, no matter how well written and detailed, is capable of being interpreted differently. In order to preserve the independence of the officials and the integrity of the system, it is

important that importers have the ability to challenge decisions and be assured of a fair and equitable hearing and that decisions be widely publicized.<sup>140</sup>

In addition to a clear and simple policy framework, there is also the need to separate the setting of policy from its administration. Policymakers should engage in whatever dialogue is necessary during the design of the policy and the drafting of legislation, including discussions with the trade community. However, once the policy has been established and provided for in the law, there must be a clear separation between the policymakers and the officials. It must be clear that the law, as interpreted by the officials, will be applied and that it is not possible to obtain more favorable treatment through the influence of the policymakers. It should not be the responsibility of senior policymakers or ministers to review and rule on individual cases. Among others, the customs administrations in the United States and the United Kingdom have clearly established rules supporting this separation of responsibilities.

### **Transparent procedures**

It is the responsibility of customs officials to put in place simple, easily understood systems and procedures. Such procedures reduce (1) compliance costs for the importers and exporters, (2) opportunities for corruption, and (3) costs of administration.

The most important principle in the design of simple, straightforward customs procedures is self-assessment. Importers should determine their duty and tax liabilities and, based on their understanding of the law, present to the customs administration a declaration that includes a calculation of the amounts owed. This must be supported by documentation and information as requested by the administration and is, of course, subject to verification, either at the time of presentation or later through post-release verification. To be effective, and to reduce the opportunities for corruption, the self-declaration system should be based on the following:

***One-step process.*** A customs declaration should be lodged at the reception counter of the customs office and the paperwork processed by the administration with no further need for personal contact, until the processing has been completed.

***Minimal information and documentation requirement.*** Customs administrations must define their information and documentation needs in a way that minimizes the administrative requirements for importers and exporters. For example, the customs declaration can be used for multiple purposes

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<sup>140</sup>In many countries, tax cases can be appealed to a separate tax or tariff tribunal where the adjudicators have specialized knowledge of the tax laws.

(e.g., calculation and payment of duties and taxes and preparation of foreign trade statistics).

***Consistent interpretations.*** Importers can only be expected to self-declare their liabilities in an environment where the interpretation of the laws is consistent and procedures are standardized, with each transaction treated in the same way as the previous one.

***Computerization.*** The introduction of computerized support for the processing of customs declarations, perhaps more than any other change, provides the opportunity to implement standardized procedures that leave little need for face-to-face contact or opportunity for the use of discretion of officials. A properly designed system ensures that (1) the correct rates of duties and taxes are applied; (2) exemptions are only granted to authorized organizations and for authorized goods and services; (3) the required information and documentation is presented; (4) time frames for payment are met; and (5) those who do not comply with filing and payment time frames are identified and follow-up action is taken. In addition, the system can provide useful management information, including, for example, identifying transactions that do not meet time standards for processing or individual officers who undertake actions that are out of the ordinary (e.g., physically inspecting too many shipments).

### **Professional customs administrations**

Experience in developed countries has shown that the best way of ensuring fairness and neutrality in the administration of the customs system is to develop a professional administration with clearly defined responsibilities and accountability for performance. The development of a professional customs administration is important, not only to improve the effectiveness of the administration, but, at the same time, to address issues of corruption. Too often, governments are unwilling to provide authority to the administration to enforce the laws or to invest the resources necessary to build and provide ongoing support for efficient and effective administration. A professional customs administration includes the following:

***Professional management.*** It is important that the customs administrations include skilled, knowledgeable supervisors and managers. This is not always the case. A further problem is that senior officials in the administrations often change as governments change, and individuals with little or no knowledge of legislation, regulations, systems, and procedures are put in charge of collecting revenue. In these circumstances, staff may perceive that they have limited career opportunities in the organization and little, if any, “loyalty” to the organization and, consequently, may be more open to corruption. For those who join a customs organization for the term of a new government, working in that organization may be seen as a reward for past favors and an opportunity to

enrich themselves through the provision of exemptions and other concessions to the business community.

Management controls are an essential component of well-run customs administrations. These include a clear statement of goals and objectives; well-documented operating procedures; supervision of day-to-day activities; and a regular review of the performance of employees. Management should also consider the results of its internal audits, feedback from importers and exporters, and the views of its employees in evaluating the operations of an office.

***Appropriate compensation and working conditions.*** Customs officials must be provided with sufficient compensation to reduce the incentive to engage in corrupt practices. While civil service pay can never be at a level that will discourage all corrupt behavior (e.g., there are many reported cases of well-paid customs officers in developed countries who have accepted tens of thousands of dollars to allow a shipment of drugs to pass through the border), compensation can be set at a level that provides a good standard of living and eliminates the need to accept “facilitation fees.” In recognition that it may not be possible to address low civil service pay in general, some countries have implemented special pay scales and incentives for staff in revenue agencies. As stressed in the preceding chapter, adequate pay will not by itself ensure that there is no corruption in a customs administration. Nevertheless, if the pay provides an adequate standard of living, the administration can expect the officer to do a good job and not to solicit extra payments from the taxpaying public.

Some countries have sought to encourage honesty and diligence in tax officers by providing bonuses related to the amount of tax they collect. The difficulty with this is that, especially where appeal processes are weak, this provides unscrupulous officials with an incentive to exaggerate tax due. If bonuses are to be used, they should be targeted not merely—and perhaps not at all—on revenue collection, but on other aspects of performance, such as quality of service provided to taxpayers and adaptability to change.

Appropriate working conditions are also important. These include proper office space, equipment (telephones, computers, transportation, and so on), and supplies. The administration should not have to rely on importers, exporters, or their agents to provide any facilities or equipment, which could imply that a favor is expected in return.

***Staff rotation and annual leave.*** Any regulatory agency is better able to carry out its functions in an impartial manner if it remains at arm’s length from those it is charged with regulating. Revenue agencies are no different. Accordingly, it is important that staff rotations take place on a regular basis to reduce opportunities for collusion. Similarly, all staff and, in particular, managers and supervisors, should be required to take their annual leave (so as to reduce the

chance of excessively close relations emerging undetected). Relief managers should then be placed in their positions.

**Training.** Staff training is crucial to the development of professional customs administrations. In this regard, it is important that a careful analysis of the needs of both the organization and its staff be completed to ensure that the training matches their needs. Too often, new legislation and procedures are introduced with inadequate attention given to the training needs of staff. In addition to improving technical skills, training can also serve to build team spirit and an awareness of the need for responsibility and loyalty to the organization, thereby promoting integrity.

**Merit-based promotions.** An important part of establishing a professional administration is a clearly defined career path and promotion policy that is based on merit. Each individual must feel that there is an opportunity, based on hard work, to advance and that to engage in inappropriate behavior may jeopardize this opportunity (and lead to dismissal in serious cases). Customs administrations should not be seen as places to exercise political patronage and reward party loyalists.

**Recruitment.** As part of the plan to develop professional administrations, it is important that the personnel requirements be clearly defined, including the education and experience of those being hired. Revenue administrations, because of restrictive civil service rules, are often unable to hire people with the skills required to carry out specialists' tasks.

**Separation of responsibilities.** The creation of an organizational structure in which the key functions for the tax administration—such as assessment, collection, and audit—are separated across distinct departments is one of the most effective ways of combating corruption.<sup>141</sup> Too often, individual officers are assigned responsibility for all activities related to an importer or exporter. This invites collusion and the granting of favors. Through the separation of responsibilities, checks and balances are built into the system. For example, the processing of a customs declaration and physical inspection of goods, when carried out by different officers, can reduce the opportunity to influence decisions, such as the tariff classification and valuation of goods.

**Complaint monitoring.** Administrations should establish a special unit for the receipt of complaints concerning the performance of officials.

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<sup>141</sup>Ebrill and others (2001) discuss the relative merits of functional and other organizational structures for tax administration—mainly with respect to the VAT, but the essential points apply also to customs.

**Performance standards.**<sup>142</sup> Building on a base that includes transparent legislation and clearly articulated, simple procedures, customs administrations should put in place performance standards that enable policymakers, management, and the public to measure how well an administration is performing. This has several advantages. First, it enables policymakers, including ministers, to hold heads of administrations accountable, if standards are not met. Second, it enables management to measure the performance of offices and individuals and to identify potential problems. Third, it makes very clear to the employees that there are expectations and that their performance will be measured against these expectations. Fourth, the public is made aware of what is expected and, therefore, should be willing and encouraged to bring to the attention of management cases where the standards have not been met.

Too often, the only performance standard established for the administrations is the requirement to meet certain revenue targets. This is not enough, particularly if corruption is a problem. The most corrupt revenue administration in the world may, over the short term, be able to meet revenue targets. However, this may do little to ensure that the law is applied in the same manner to all taxpayers and that the collection of expected revenue from new policy initiatives will be achieved. Performance standards in revenue administrations should include the following:

**Service standards.** These should be clearly articulated standards for the various functions that are to be performed. For importers, it is very important that they know the time that the goods will be under customs control, as this can significantly affect estimates of inventory requirements. By establishing service standards (e.g., for the release of goods) and making them known to staff and to importers and exporters, an administration can establish monitoring mechanisms to identify transactions, offices, and officers that do not meet the required standards. Reports from the monitoring system may also help to identify areas that should be investigated for potential corrupt practices.

**Code of conduct.** It is important that employees and importers and exporters be aware of the conduct that is expected of both parties. By clearly articulating expectations, customs administrations can hold employees accountable for performance and take appropriate action when these standards are not met. Many administrations publish a “code of conduct” with these expectations.<sup>143</sup> For such a code to be effective, it must also include a description of the disciplinary actions that will be taken if unacceptable behavior is discovered and disciplinary action must be taken on a regular, consistent basis. The political and social context of a particular country is important in establishing the rules for

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<sup>142</sup>Crotty (1996) provides a detailed account of performance standards.

<sup>143</sup>Some customs administrations also issue a “code of ethics” (sometimes called a customs “charter”) that sets out not only what traders can expect from them, but also what they expect from traders, such as honesty and the prompt production of complete and accurate information.

acceptable conduct, and the rules guiding participation of tax and customs officials in activities outside their official responsibilities will vary from country to country. However, the code should normally include standards concerning the following:

- **Maintaining integrity.** The acceptance of gifts, favors, or benefits to influence decisions is not permitted. Disciplinary action up to and including dismissal is normally taken in cases where employees accept a gift of any significant value.
- **Confidentiality of information.** Information from customs declarations as well as that obtained from post-release reviews is confidential and, as such, must not be used by employees nor disclosed in an unauthorized manner.
- **Conflict of interest.** Employees are normally prohibited from engaging in activities that are in clear conflict with their official position. For example, a customs officer would not be permitted to own a customs brokerage business or to engage in any business that involves extensive import and export activities. Many administrations also have a requirement that employees disclose their assets at the time of hiring and update this information on a regular basis so their managers can detect, at an early stage, that an employee has accrued assets inconsistent with the level of compensation received by the employee.
- **Appearance and conduct.** Standards for appearance and conduct normally include observing the hours of duty; dressing appropriately; dealing courteously with the taxpaying public; refraining from the use of intoxicants in the workplace; and using government equipment, including vehicles, only for business purposes.

### **Effective internal audit**

While it is the overall responsibility of management to monitor performance and to ensure that operational policies are being followed and performance standards are being met, this must be supplemented by effective internal audit. Usually, the internal audit department reports to the head of the administration and is responsible for carrying out regular reviews of all operations in the organization. It is often the internal auditors in customs administrations who are the first to detect instances of corruption when reviewing compliance with procedures.<sup>144</sup> Serious cases of corruption, involving violations of the law, are usually turned over to law enforcement officials for criminal prosecution. Internal audit activities normally include the following:

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<sup>144</sup>In some administrations, there is also a separate Internal Affairs department that is responsible for dealing with specific cases of alleged corruption, such as the misappropriation of funds. If management or internal audit uncovers cases of corruption, they are turned over to this organization.

***Compliance with operational procedures.*** Based on clearly defined procedures usually laid out in manuals or procedure guides, an auditor reviews the actual operation of the customs offices. This might include, for example, reviews of declaration processing and procedures for the selection of shipments for physical inspection.

***Expenditure/use of government funds/assets.*** There are opportunities in the administration of large government departments to misappropriate funds and it is one of the roles of internal audit to review activities related, for example, to the purchasing of supplies, awarding of contracts, and the hiring of personnel. (Some countries, for instance, have a serious problem with nonexistent “ghost workers” appearing on the payroll.)

### **Administrative autonomy**

As discussed in the previous chapter, one strategy that a number of countries have adopted in recent years has been to increase the autonomy of the customs administration. While there are a number of alternatives to providing greater autonomy, most share the following common features: (1) a degree of financial independence, in the sense that the administrations are able to allocate budget funds as they deem appropriate; (2) administrative independence, meaning that the administrations are provided with the authority to formulate their own administrative policies and objectives; and (3) independence from general civil service requirements, meaning that the administrations are responsible for their own recruitment, salary structure, career path and training, and establishing performance standards and codes of conduct.

Given appropriate checks and balances on such customs administrations and the willingness of the government not to interfere in day-to-day operations, increased autonomy may be effective in putting in place measures to increase integrity and combat corruption.

## **C. Other Important Considerations**

There are other very important considerations that can affect the ability of customs administrations to build organizations based on integrity and to battle against corruption. These relate very much to the culture and history of a particular country and can greatly influence efforts to put in place measures of the kind outlined in this chapter.

### **Are traders comfortable entering a dialogue with the customs administration?**

The seeking of information and entering into a reasonable dialogue with the trade community on the interpretation of legislation and procedures are

important features of a good customs system. Too often, however, this does not happen and it can be very difficult to foster. Foreign-owned companies that may be familiar with this approach in their own countries may be reluctant to enter into discussions on issues of interpretation of the law in a country where corruption is widespread, for fear that they may be asked for a bribe (which, under the laws in their home country, they are required to report).<sup>145</sup> They may often prefer to pay a fee to a middleman to intercede on their behalf and not request a detailed explanation of how the fee is used.

### **Is the judiciary independent?**

Many customs-related decisions end up in court. It may be possible to create professional, honest customs administrations, but their work to ensure compliance with the revenue laws can lose much of its impact if the judicial system is corrupt. In the worst cases, the courts may overturn sound decisions made on the interpretation of customs legislation, criminal prosecutions for fraud, and prosecutions of corrupt employees.

### **Is there a free press?**

It is often the media that exposes corruption in government. It has a crucial role to play in questioning some of the decisions that are made at the highest level (in the granting of exemptions, for instance) and in exposing corruption in local offices.

In the absence of a broader political and social environment that encourages interaction with the administrations, an independent judiciary, and freedom of the press, it is very difficult to sustain the benefits of implementing an honest customs administration. That is not to say that changes of the kind discussed in this chapter should not be implemented, but there must be a recognition that their impact will not be as far reaching.

## **D. Conclusion**

It is clear that there is no easy or quick solution to the problem of establishing integrity in customs administrations. What is needed is a comprehensive approach, putting in place the range of required measures and ensuring that they operate effectively. These include a clear, well-understood policy framework; simple, transparent procedures; a professional customs administration; performance standards; performance-related pay; a strongly enforced code of conduct; effective internal audit; and freedom from political interference. In

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<sup>145</sup>Under U.S. anticorruption legislation, for instance, it is an offense to bribe foreigners in a foreign country.

support of these elements, there should also be an atmosphere that encourages members of the trade community to come forward and discuss issues with the administration; an independent, honest judicial system; and a press that is interested, able, and allowed to raise issues of corruption.